

No. 3007

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IN THE

**United States Circuit Court**

**of Appeals**

**For the Ninth Circuit**

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THE UNITED STATES OF AMERICA,

Plaintiff in Error,

vs.

COLUMBIA & NEHALEM RIVER RAILROAD  
COMPANY,

Defendant in Error.

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**Transcript of Record**

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Upon Writ of Error to the United States District  
Court for the District of Oregon.

FILED  
MAY 6 1907  
P. O. MONTGOMERY  
CLERK

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THE UNITED STATES OF AMERICA,

Plaintiff in Error,

vs.

COLUMBIA & NEHALEM RIVER RAILROAD  
COMPANY,

Defendant in Error.

**(NAMES AND ADDRESSES OF THE ATTOR-  
NEYS OF RECORD)**

MR. LESTER W. HUMPHREYS,

United States Attorney for the District of Ore-  
gon, Portland, Oregon,

MR. THOS. H. MAGUIRE,

Assistant United States Attorney for the District  
of Oregon, Portland, Oregon.

For the Plaintiff in Error.

MESSRS. WILBUR, BECKETT & HOWELL,

Board of Trade Building., Portland, Oregon.

For the Defendant in Error.

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IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF OREGON

March Term 1920

BE IT REMEMBERED, That on the 3rd day of  
April, 1920, there was duly filed in the District Court  
of the United States for the District of Oregon a  
Complaint, in words and figures as follows, to-wit:

(COMPLAINT)

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF OREGON

Division.

THE UNITED STATES OF  
AMERICA,

Plaintiff,

vs.

COLUMBIA & NEHALEM RIVER  
RAILROAD COMPANY,

Defendant.

No. L-8609

Now comes the United States of America, by  
Chas. W. Reames, Assistant United States Attorney  
for the District of Oregon, and brings this action on  
behalf of the United States against the Columbia &

Nehalem River Railroad Company, a corporation, organized and doing business under the laws of the State of Oregon, and having an office and place of business at Kerry, in the State of Oregon; this action being brought upon suggestion of the Attorney General of the United States at the request of the Interstate Commerce Commission, and upon information furnished by said Commission.

#### FOR A FIRST CAUSE OF ACTION

plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Oregon.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employes and travelers upon railroads by limiting the hours of service of employes thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), defendant, during the twenty-four-hour period beginning at the hour of 6:00 o'clock a. m., on September 1, 1919, at its office and station at Kerry, in the State of Oregon, and within the jurisdiction of this Court, required and permitted its certain telegraph operator and employe, to-wit, J. G. Nash, to be and remain on duty for a longer period



than nine hours in said twenty-four-hour period, to-wit: from said hour of 6:00 o'clock a. m. on said date, to the hour of 11:50 o'clock p. m., on said date.

Plaintiff further alleges that during all the times mentioned herein said office and station was one continuously operated night and day, and that said employe, while required and permitted to be and remain on duty as aforesaid, by the use of the telegraph or telephone, dispatched, reported, transmitted, received and delivered orders pertaining to and affecting the movement of trains engaged in interstate commerce.

Plaintiff further alleges that by reason of the violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred dollars.

#### FOR A SECOND CAUSE OF ACTION

plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Oregon.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employes and travelers upon railroads by limiting the hours of service of employes thereon,"

approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), defendant, during the twenty-four-hour period beginning at the hour of 5:50 o'clock a. m., on September 9, 1919, at its office and station at Kerry, in the State of Oregon, and within the jurisdiction of this Court, required and permitted its certain telegraph operator and employe, to-wit, J. G. Nash, to be and remain on duty for a longer period than nine hours in said twenty-four-hour period, to-wit: from said hour of 5:50 o'clock a. m., on said date, to the hour of 10:45 o'clock p. m., on said date.

Plaintiff further alleges that during all the times mentioned herein said office and station was one continuously operated night and day, and that said employe, while required and permitted to be and remain on duty as aforesaid, by the use of the telegraph or telephone, dispatched, reported, transmitted, received and delivered orders pertaining to and affecting the movement of trains engaged in interstate commerce.

Plaintiff further alleges that by reason of the violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred dollars.

FOR A THIRD CAUSE OF ACTION  
plaintiff alleges that defendant is, and was during all

the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Oregon.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employes and travelers upon railroads by limiting the hours of service of employes thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), defendant, during the twenty-four period beginning at the hour of 7:00 o'clock a. m. on November 2, 1919, at its office and station at Kerry, in the State of Oregon, and within the jurisdiction of this Court, required and permitted its certain telegraph operator and employe, to-wit: J. G. Nash, to be and remain on duty for a longer period than nine hours in said twenty-four-hour period, to-wit: from said hour of 7:00 o'clock a. m., on said date, to the hour of 1:15 o'clock a. m., on November 3, 1919.

Plaintiff further alleges that during all the times mentioned herein said office and station was one continuously operated night and day, and that said employe, while required and permitted to be and remain on duty as aforesaid, by the use of the telegraph or telephone, dispatched, reported, transmitted, received

and delivered orders pertaining to and affecting the movement of trains engaged in interstate commerce.

Plaintiff further alleges that by reason of the violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred dollars.

#### FOR A FOURTH CAUSE OF ACTION

plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Oregon.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employes and travelers upon railroads by limiting the hours of service of employes thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), defendant, during the twenty-four-hour period beginning at the hour of 6:00 o'clock a. m., on November 5, 1919, at its office and station at Kerry, in the State of Oregon, and within the jurisdiction of this Court, required and permitted its certain telegraph operator and employe, to-wit, J. G. Nash, to be and remain on duty for a longer period than nine hours in said twenty-four-hour period, to-

wit: from said hour of 6:00 o'clock a. m., on said date, to the hour of 12:30 o'clock a. m., on November 6, 1919.

Plaintiff further alleges that during all the times mentioned herein said office and station was one continuously operated night and day, and that said employe, while required and permitted to be and remain on duty as aforesaid, by the use of the telegraph or telephone, dispatched, reported, transmitted, received and delivered orders pertaining to and affecting the movement of trains engaged in interstate commerce.

Plaintiff further alleges that by reason of the violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred dollars.

#### FOR A FIFTH CAUSE OF ACTION

plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Oregon.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employes and travelers upon railroads by limiting the hours of service of employes thereon,"

approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), defendant, during the twenty-four-hour period beginning at the hour of 6:00 o'clock a. m., on November 15, 1919, at its office and station at Kerry, in the State of Oregon, and within the jurisdiction of this Court, required and permitted its certain telegraph operator and employe, to-wit, J. G. Nash, to be and remain on duty for a longer period than nine hours in said twenty-four-hour period, to-wit: from said hour of 6:00 o'clock a. m., on said date, to the hour of 9:20 o'clock p. m., on said date.

Plaintiff further alleges that during all the times mentioned herein said office and station was one continuously operated night and day, and that said employe, while required and permitted to be and remain on duty as aforesaid, by the use of the telegraph or telephone, dispatched, reported, transmitted, received and delivered orders pertaining to and affecting the movement of trains engaged in interstate commerce.

Plaintiff further alleges that by reason of the violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred dollars.

WHEREFORE, plaintiff prays judgment against said defendant in the sum of twenty-five hundred dol-

lars and its costs herein expended.

CHAS. W. REAMES,  
Assistant United States Attorney.

UNITED STATES OF AMERICA, )  
 ) ss.  
District of Oregon, )

I, Chas. W. Reames, being first duly sworn, depose and say that I am a duly appointed, qualified and acting Assistant United States Attorney for the District of Oregon; that I have read the foregoing Complaint and verily believe the contents thereof to be true, in that I make this verification because of reports, documents and files in my possession.

CHAS. W. REAMES.

Subscribed and sworn to before me this 3rd day  
of April, 1920.

(SEAL)

G. H. MARSH,  
Clerk of U. S. Court,  
By K. F. Frazer, Deputy.

AND AFTERWARDS, to-wit, on the 21st day of May, 1920, there was duly filed in said Court, an Answer, in words and figures as follows, to-wit:

## (ANSWER)

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF OREGON

THE UNITED STATES OF AMERICA,	Plaintiff,	No. L-8609
vs.		
COLUMBIA & NEHALEM RIVER RAILROAD COMPANY,	Defendant.	Answer.

Comes now the defendant, Columbia & Nehalem River Railroad, a corporation, erroneously designated in the complaint as Columbia & Nehalem River Railroad Company, and answering the complaint herein, denies as follows:

## I.

Answering the first cause of action alleged in the complaint the defendant denies the same, and each and every allegation thereof.

## II.

Answering the second cause of action alleged in the complaint the defendant denies the same, and each and every allegation thereof.

## III.

Answering the third cause of action alleged in the



complaint the defendant denies the same, and each and every allegation thereof.

## IV.

Answering the fourth cause of action alleged in the complaint the defendant denies the same, and each and every allegation thereof.

## V.

Answering the fifth cause of action alleged in the complaint the defendant denies the same, and each and every allegation thereof.

WHEREFORE, the defendant prays that plaintiff take nothing herein, and for judgment against plaintiff for its costs and disbursements.

VEAZIE & VEAZIE,

Attorneys for Defendant.

STATE OF OREGON,     )  
                                          ) ss.  
County of Multnomah     )

I, J. C. Veazie, being duly sworn, depose and say that I am the secretary of the Columbia & Nehalem River Railroad, the above named defendant, and make this verification on its behalf; that I know the contents of the foregoing answer, and believe the same to be true.

J. C. VEAZIE,

Subscribed and sworn to before me this 21st day of May, 1920.

(SEAL)

R. C. TAYLOR,

Notary Public for the State of Oregon.

My commission expires February 2, 1924.

AND AFTERWARDS, to-wit, on the 15th day of July, 1920, there was duly filed in said Court, a stipulation waiving jury trial, in words and figures as follows, to-wit:

**(STIPULATION WAIVING JURY TRIAL)**

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF OREGON  
THE UNITED STATES OF  
AMERICA,

Plaintiff,

vs.

COLUMBIA & NEHALEM RIVER  
RAILROAD COMPANY,

Defendant.

The above-named defendant hereby waives a jury trial.

J. C. VEAZIE,

Attorney for Defendant.

It is hereby stipulated between the parties in this

cause that a jury trial be waived and the above entitled case be tried before the Court.

Dated this 15th day of July, 1920.

J. C. VEAZIE,

Attorney for Defendant.

CHAS. W. REAMES,

Attorney for United States.

AND AFTERWARDS, to-wit, on the 26th day of July, 1920, there was duly filed in said Court, an opinion, in words and figures as follows, to-wit:

### (OPINION OF THE COURT)

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF OREGON  
THE UNITED STATES OF  
AMERICA,

Plaintiff,

vs.

COLUMBIA & NEHALEM RIVER  
RAILROAD COMPANY,

Defendant.

Memorandum by Bean, District Judge:

This is an action by the Government to recover penalties provided by Act of Congress of March 4, 1907 (34 Stat. 1415), known as the Hours of Service

Act. This act makes it unlawful for any common carrier engaged in the transportation of passengers or property from one state to any other state to require or permit a train dispatcher or other employe who, by the use of the telephone or telegraph, transmits, receives or delivers orders pertaining to or affecting train movements, to remain on duty for a longer period than a specific number of hours.

The complaint alleges that defendant is a common carrier within the meaning of this law and charges four violations thereof. By agreement of parties the case was tried by the Court without the intervention of a jury.

The facts are that the defendant is a corporation organized and existing under a law of the State of Oregon for the purpose of engaging in the transportation of timber and lumber, and is required, under the law of its creation, "to afford all persons equal facilities for the transportation of freight upon payment or tender of reasonable transportation therefor." (Lord's Oregon Laws, Sec. 6857-6858.) It owns and operates a railroad from Kerry, a station on the Spokane, Portland & Seattle road, south twenty or twenty-five miles and wholly within the State of Oregon. Its road is used principally for the transpor-

tation of saw logs to the Columbia River, where they are unloaded into the river and from thence transported by water to their destination. It has no agents or stations along its line or at any point thereon except its terminal at Kerry. It has no through rates or traffic arrangements with any other road and no conventional agreement for the division of charges. It issues no bills of lading for carriage beyond its own line, and neither assumes, charges or collects freight for carriage on other lines, nor does it receive and accept goods on through bills of lading from other points consigned to points on its line. Ninety-five per cent, or more of its entire business consists of hauling logs. It does, however, receive and transport a small amount of express and freight from Kerry to parties along its line which comes in over the S. P. & S., some of it from points outside of the state. In such cases the goods are addressed to the consignee at Kerry and waybilled to that point, but by arrangement between the consignees and the defendant company the goods are received by the defendant from the S. P. & S., and transported over its lines, and it receives compensation therefor. This transportation is sometimes in cars of the S. P. & S., for which it is charged demurrage the same as any other shipper.

These cars are sometimes loaded for the return journey with lumber, shingles, etc., destined for points outside of the state and moved by the defendant to Kerry and placed on the tracks of the S. P. & S. In such case the custom is for the shipper, after loading the cars, to make out two sets of shipping orders, one for the movement over the defendant's line and another for the S. P. & S. Co. The train crew of the defendant picks up the cars so loaded, together with the shipping orders, none of which have been signed or approved by any agent or representative of the defendant, takes them in to Kerry, where the order covering the carriage over its road is delivered to its agent and the other placed in a box alongside the S. P. & S. track, from whence it is taken by a freight conductor of that company and, together with the case, moved to the nearest S. P. & S. station having an agent where the bill of lading is signed by such agent and the goods billed and forwarded to their destination.

The question for decision is whether under these facts the defendant is engaged in the transportation of property from one state to another within the meaning of the Hours of Service Act.

It is said that whenever a commodity has begun

to move from one state to another traffic in that commodity has commenced and the fact that several different and independent agencies are employed in the transportation, some acting entirely within one state and some acting through two or more states, does not affect the character of the transportation, whether the goods are carried on through bills of lading or rebilled by the various carriers. (The *Daniel Ball*, 10 Wall. 537; *Ohio R. R. Com. v. Worthington*, 225 U. S. 101; *U. S. vs. C. & N. W.*, 157 Fed. 321; *Pac. Coast R. vs. U. S.* 173 Fed. 448.) But, as said by the Supreme Court in *Cox vs. Errol*:

“This movement does not begin until the articles have been shipped or started for transportation from the one state to the other . . . Carrying it from the farm or the forest to the depot is only an interior movement of the property entirely within the state for the purpose, it is true, but only for the purpose of putting it into a course of exportation; it is no part of the exportation itself. Until shipped or started on its final journey out of the state its exportation is a matter altogether *in fieri* and not at all a fixed and certain thing.” (116 U. S. 528.)

And such I take it is the effect of the business of the defendant. It is engaged in the carrying of the products of the forest to the depot or station of the S. P. & S. Co., for shipment, and in receiving from that line goods the contract of carriage of which has ended (*Gulf C. & S. F. Ry. vs. Texas*, 204 U. S. 403), and delivering them to the owner. In short the essential character of the defendant's business is that of a forwarding agency. Under the laws of its creation it is a common carrier of freight. As such it must accept and carry over its lines all proper subjects of traffic regardless of whence it comes or its ultimate destination. When freight is offered to it for transportation, no matter by whom offered or where destined, it has no discretion to refuse to carry it, but in my judgment clearly has a legal right and does confine its business to its own lines and is therefore engaged in intra- and not interstate carriage. (*Seattle vs. B. & O.*, 249 Fed. 913; *Gulf D. & S. F. vs. Tex.*, *supra*; *N. Y. Cen. R. R. vs. Mahoney*, decided by Sp. Ct., March 1, 1920.)

It follows that the plaintiff is not entitled to recover and findings and judgment may be prepared accordingly.

AND AFTERWARDS, to-wit, on the 16th day



of August, 1920, there was duly filed in said Court, Findings of Fact and Conclusions of Law, in words and figures as follows, to-wit:

**(FINDINGS OF FACT AND CONCLUSIONS  
OF LAW)**

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF OREGON

<p>THE UNITED STATES OF AMERICA,</p>	<p>Plaintiff,</p>	<p>Findings of</p>
<p>vs.</p>		
<p>COLUMBIA &amp; NEHALEM RIVER RAILROAD COMPANY,</p>	<p>Defendant.</p>	<p>Fact and</p>
		<p>Conclusions</p>
		<p>of Law.</p>

This cause came on regularly for trial on the merits, July 15th, 1920, the plaintiff appearing by Chas. W. Reames, Esq., Assistant United States Attorney, and Roscoe B. Walker, Esq., Attorney for the Interstate Commerce Commission, and the defendant appearing by Veazie & Veazie, its attorneys.

By their written waiver on file herein both parties waived jury trial and consented that the case be tried by the Court, without a jury. Thereupon, the Court heard the testimony and evidence offered on behalf of the respective parties, and the arguments of coun-

sel, and took the case under advisement, and being now duly advised, makes the following

## FINDINGS OF FACT.

### I.

As to the first cause of action set out in the complaint the Court finds that the defendant is not, and was not at any of the times mentioned in the complaint engaged in interstate commerce.

### II.

As to the second cause of action set forth in the complaint the Court finds that the defendant is not and was not at any of the times mentioned in the complaint engaged in interstate commerce.

### III.

As to the third cause of action set forth in the complaint the Court finds that the defendant is not and was not at any of the times mentioned in the complaint engaged in interstate commerce.

### IV.

As to the fourth cause of action set forth in the complaint the Court finds that the defendant is not and was not at any of the times mentioned in the complaint engaged in interstate commerce.

As to the fifth cause of action set forth in the complaint the Court finds that the defendant is not and was not at any of the times mentioned in the complaint engaged in interstate commerce.

From the foregoing findings of fact, the Court makes and states the following

### CONCLUSIONS OF LAW.

That the defendant is not subject to the Act of Congress mentioned in the complaint, and that plaintiff is not entitled to recover herein upon either or any of its said causes of action, and that defendant is entitled to a judgment that plaintiff take nothing herein.

Dated this 16th day of August, 1920.

R. S. BEAN,

Judge.

AND AFTERWARDS, to-wit, on the 16th day of August, 1920, there was duly filed in said Court a judgment, in words and figures as follows, to-wit:

## (JUDGMENT)

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF OREGON

THE UNITED STATES OF

AMERICA,

Plaintiff,

vs.

COLUMBIA & NEHALEM RIVER

RAILROAD COMPANY,

Defendant.

Judgment.

This cause having come on regularly for trial on the 15th day of July, 1920, the plaintiff appearing by Chas. W. Reames, Esq., Assistant United States Attorney, and Roscoe B. Walker, Esq., Attorney for the Interstate Commerce Commission, and the defendant appearing by Veazie & Veazie, its attorneys, and the parties thereto having by their written waiver on file herein waived jury trial, and consented to the trial of the case by the Court without a jury, and the Court having heard the evidence offered by the respective parties and the arguments of counsel, and taken the case under advisement, and having heretofore made and filed its findings of fact and conclusions of law wherefrom it appears that the plaintiff is not entitled to recover upon either or any of the causes of action set forth in the complaint:

NOW THEREFORE based upon the said findings of fact and conclusions of law it is hereby considered ordered and adjudged that the plaintiff take nothing by this action.

Dated this 16th day of August, 1920.

R. S. BEAN,

Judge.

AND AFTERWARDS, to-wit, on Tuesday, the 24th day of August, 1920, the same being the 44th judicial day of the regular July term of said Court; present the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

**(ORDER EXTENDING TIME)**

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF OREGON

THE UNITED STATES OF  
AMERICA,

Plaintiff,

vs.

COLUMBIA & NEHALEM RIVER  
RAILROAD COMPANY,

Defendant.

No. L-8609

August 24,  
1920.

Now, at this day upon motion of Mr. Austin F. Flegel, Jr., Assistant United States Attorney, it is

ordered that plaintiff be and is hereby allowed 30 days from this date within which to move to set aside the judgment herein, to submit special findings of fact, and to prepare and submit its bill of exceptions herein.

AND AFTERWARDS, to-wit, on Saturday, the 18th day of September, 1920, the same being the 66th judicial day of the regular July term of said Court; present the Honorable Charles E. Wolverton, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

**(ORDER EXTENDING TIME)**

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF OREGON

THE UNITED STATES OF  
AMERICA,

vs.

COLUMBIA & NEHALEM RIVER  
RAILROAD COMPANY,  
Defendant.

Plaintiff,

No. L-8609

September 18,  
1920.

Now at this day upon motion of Mr. Charles W. Reames, Assistant United States Attorney,

IT IS ORDERED that he be and he is hereby

allowed thirty days from September 24, 1920, to file objections to the proposed findings of fact herein.

AND AFTERWARDS, to-wit, on Friday, the 22nd day of October, 1920, the same being the 95th judicial day of the regular July term of said Court; present the Honorable Charles E. Wolverton, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

**(ORDER EXTENDING TIME)**

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF OREGON

THE UNITED STATES OF AMERICA,	} Plaintiff,	No. L-8609
vs.		October 22,
COLUMBIA & NEHALEM RIVER RAILROAD COMPANY,		1920.
	Defendant.	

Now at this day upon motion of Mr. Charles W. Reames, Assistant United States Attorney,

IT IS ORDERED that he be and he is hereby allowed ninety days from this date to submit a request for special findings herein and to submit a bill of exceptions herein.

AND AFTERWARDS, to-wit, on the 31st day of

December, 1920, there was duly filed in said Court, a request for Findings of Fact, in words and figures as follows, to-wit:

**(REQUESTED FINDINGS OF FACT)**

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF OREGON  
THE UNITED STATES OF  
AMERICA,

Plaintiff,

vs.

COLUMBIA & NEHALEM RIVER  
RAILROAD COMPANY,

Defendant.

Comes now Chas. W. Reames, Assistant United States Attorney for the District of Oregon, attorney for the plaintiff in the above entitled case, and respectfully requests that the Court make findings of fact in regard to the following matters:

I.

As to whether the movement of C. & N. W. Car No. 21543, loaded with shingles and consigned from Elwood Siding, Oregon, to Detroit, Michigan, over the lines of the Columbia & Nehalem River Railroad and other railroads, on September 1, 1919, handled



by J. G. Nash, train dispatcher of the Columbia & Nehalem River Railroad at Kerry, Oregon, constituted a movement of trains or the consignment of goods in interstate commerce.

## II.

As to whether J. G. Nash, train dispatcher for the Columbia & Nehalem River Railroad at Kerry, Oregon, was permitted to remain on duty for a longer period than nine hours on September 1, 1919, in the 24-hour period, to-wit: from the hour of 6 o'clock a. m., on said date to the hour of 11:50 p. m., on said date, and whether he was employed during that time directing the movement of trains, or a train, engaged in interstate commerce, and whether or not the remaining upon duty of said train dispatcher on September 1, 1919, as stated, was a violation of the Hours of Service Act.

## III.

As to whether the shipment over the line of the Columbia & Nehalem River Railroad and other lines of Car No. 287591, initialed P. R. R., containing ties from Birkenfeld, Oregon, to Chicago, Illinois, handled by J. G. Nash, train dispatcher of the Columbia & Nehalem River Railroad, on September 9, 1919, constituted a movement of trains, or a train, engaged

in interstate commerce, or the shipment of goods in interstate commerce.

## IV.

As to whether Car No. 76885, initialed C. & N. W., loaded with lumber shipped from Birkenfeld, Oregon, to Springfield, Illinois, handled by Train Dispatcher J. G. Nash of the Columbia & Nehalem River Railroad at Kerry, Oregon, on Sept. 9, 1919, and shipped over the Columbia & Nehalem River Railroad and other railroads, constituted a movement of a train or trains, or the shipment or consignment of goods in interstate commerce.

## V.

As to whether J. G. Nash, train dispatcher at Kerry, Oregon, of the Columbia & Nehalem River Railroad, was permitted to work and remain on duty more than nine hours in the twenty-four hour period in which he was then employed, on September 9, 1919, and whether he was engaged in the directing of trains and dispatching of trains engaged in interstate commerce, or carrying articles which were shipped in interstate commerce.

## VI.

As to whether the movement of Car No. 20098, initialed NW, loaded with lumber consigned from

Birkenfeld, Oregon, to Sheridan, Wyoming, over the Columbia & Nehalem River Railroad and other railroads, handled by J. G. Nash at Kerry, Oregon, on November 2, 1919, constituted a movement of a train or trains in interstate commerce, or the shipment or consignment of goods in interstate commerce or forming a part of interstate commerce.

#### VII.

As to whether J. G. Nash, train dispatcher of the Columbia & Nehalem River Railroad at Kerry, Oregon, was permitted by the Columbia & Nehalem River Railroad to remain on duty more than nine hours in the twenty-four hour period in which he was employed on November 22, 1919, and whether he was engaged in dispatching trains engaged in interstate commerce, or carrying articles forming a part of interstate commerce in violation of the Hours of Service Act.

#### VIII.

As to whether Car No. 2242, initialed C. & F. I., loaded with shingles consigned from M. J. Campbell Lumber Company, Elwood, Oregon, to Ventura, California, on November 5, 1919, handled by J. G. Nash, train dispatcher of the Columbia & Nehalem River Railroad at Kerry, Oregon, constituted a move-

ment of a car or cars engaged in interstate commerce, and whether it constituted a shipment of articles in interstate commerce.

### IX.

As to whether J. G. Nash, train dispatcher of the Columbia & Nehalem River Railroad at Kerry, Oregon, was permitted to work more than nine hours in the twenty-four hour period in which he was employed on November 5, 1919, at Kerry, Oregon, and whether he was then engaged in handling cars engaged in interstate commerce or dispatching cars carrying articles forming a part of interstate commerce.

### X.

As to whether Car No. 72682, initialed LV, containing shingles consigned from Nehalem Camp, Oregon, to Cheyenne, Wyoming, over the Columbia & Nehalem River Railroad and other railroads, handled by Train Dispatcher J. G. Nash of the Columbia & Nehalem River Railroad at Kerry, Oregon, on November 15, 1919, constituted a train engaged in interstate commerce, or the shipment or consignment of articles forming a part of interstate commerce.

## XI.

As to whether Train Dispatcher J. G. Nash of the Columbia & Nehalem River Railroad at Kerry, Oregon, was permitted on November 15, 1919, to work more than nine hours in the said twenty-four hour period on the said day on which he was employed and whether he was engaged in dispatching trains engaged in carrying articles forming a part of interstate commerce and whether he was engaged in dispatching trains engaged in interstate commerce and whether the working of J. G. Nash on said November 15, 1919, constituted a violation of the Hours of Service Act.

## XII.

As to whether the shipment and consignment of express packages of the Columbia & Nehalem River Railroad from points along the line of the Columbia & Nehalem River Railroad in the State of Oregon, to points outside of the State of Oregon and over other railroads, constituted the carrying of articles forming a part of interstate commerce.

## XIII.

As to whether the receipt of articles shipped from points outside of the State of Oregon, over other railroads than the Columbia & Nehalem River Rail-

road, by the Columbia & Nehalem River Railroad within the State of Oregon, to be delivered and transmitted by said Columbia & Nehalem River Railroad to points along the line of said railroad, constituted the carrying of articles forming a part of interstate commerce.

## XIV.

As to whether the receiving of articles which had been shipped in interstate commerce over other railroads than the Columbia & Nehalem River Railroad by the Columbia & Nehalem River Railroad indiscriminately as to whether the articles came from outside the State of Oregon, or within the State of Oregon, but were actually shipped from points outside the State of Oregon, constituted the carrying of articles forming a part of interstate commerce.

Respectfully submitted,

CHAS. W. REAMES,

Assistant United States Attorney.

At this time the court declines to make the foregoing findings as requested to which ruling the plaintiff duly excepts which exception is hereby allowed.

Dated December 13th, 1920.

R. S. BEAN,  
Judge.

AND AFTERWARDS, to-wit, on Wednesday, the 19th day of January, 1921, the same being the 67th judicial day of the regular November term of said Court; present the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

**(ORDER EXTENDING TIME)**

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF OREGON

THE UNITED STATES OF AMERICA,	} Plaintiff,	No. L-8609
vs.		
COLUMBIA & NEHALEM RIVER RAILROAD COMPANY,	} Defendant.	January 19, 1921.

Now at this day upon motion of Mr. Thomas H. Maguire, Assistant United States Attorney.

IT IS ORDERED that he be and he is hereby allowed fifteen days from this date to file his bill of exceptions herein.

AND AFTERWARDS, to-wit, on Friday, the 4th day of February, 1921, the same being the 81st judicial day of the regular November term of said Court; present the Honorable Robert S. Bean, United

States District Judge, presiding, the following proceedings were had in said cause, to-wit:

**(ORDER EXTENDING TIME)**

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF OREGON

THE UNITED STATES OF AMERICA,	Plaintiff,	} No. L-8609 February 4, 1921.
vs.		
COLUMBIA & NEHALEM RIVER RAILROAD COMPANY,		
Defendant.		

Now at this day upon motion of Mr. Thomas H. Maguire, Assistant United States Attorney.

IT IS ORDERED that he be and he is hereby allowed to Saturday, February 12, 1921, to submit his bill of exceptions herein.

AND AFTERWARDS, to-wit, on the 15th day of February, 1921, there was duly filed in said Court, a Petition for Writ of Error, in words and figures as follows, to-wit:



## (PETITION FOR WRIT OF ERROR)

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF OREGON

THE UNITED STATES OF

AMERICA,

vs.

COLUMBIA & NEHALEM RIVER

RAILROAD COMPANY,

Defendant.

Plaintiff,

Petition for

Writ of

Error.

To the Honorable Robert S. Bean, Judge of the  
Above Entitled Court:

Comes now the United States of America, the  
plaintiff herein, by Thos. H. Maguire, Assistant  
United States Attorney for the District of Oregon,  
and respectfully shows that on the 16th day of  
August, 1920, judgment in the above entitled cause  
was entered in favor of the defendant herein and  
against your petitioner.

Your petitioner, feeling itself aggrieved by said  
order entering judgment in favor of said defendant  
in which proceeding certain errors were committed  
to the prejudice of the plaintiff, all of which will more  
fully appear from the Bill of Exceptions and Assign-  
ments of Error filed with this petition, does herewith

petition the Honorable Court for an Order allowing your petitioner to prosecute a Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit, under the rules and laws of the United States in such case made and provided.

Wherefore your petitioner prays that a Writ of Error may issue in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors so complained of and that an order be made staying all further proceedings until the determination of such Writ of Error by said Circuit Court of Appeals and that a transcript of the records, proceedings and papers in this cause, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated at Portland, Oregon, this 14th day of February, 1921.

UNITED STATES OF AMERICA.

By THOS. H. MAGUIRE.

Assistant United States Attorney  
for the District of Oregon.

STATE OF OREGON, )  
County of Multnomah, ) ss.

Due legal and timely service of the foregoing

petition for Writ of Error is hereby acknowledged by receipt of a copy thereof at Portland, Oregon, this 15th day of February, 1921.

WILBUR, BECKETT & HOWELL,

Attorneys for Defendant.

AND AFTERWARDS, to wit, on the 15th day of February, 1921, there was duly filed in said Court, an Assignment of Errors in words and figures as follows, to wit:

**(ASSIGNMENT OF ERRORS)**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON THE UNITED STATES OF AMERICA,	Plaintiff,	} Assignment of Errors.
vs.		
COLUMBIA & NEHALEM RIVER RAILROAD COMPANY,	Defendant.	

The United States of America, the plaintiff in error herein, having petitioned for an order from said Court permitting a Writ of Error from this Court directed to the United States Circuit Court of Appeals for the Ninth Circuit from the final order and judgment made and entered in said cause against said Plaintiff in Error and petitioner herein, now

makes and files with said petition the following Assignments of Error upon which it will rely for a reversal of said final order and judgment upon the said Writ and which said errors and each and every one of them are to the great detriment, injury and prejudice of said defendant, and said defendant says that in the records and proceedings upon the hearing and determination thereof in the District Court of the United States for the District of Oregon, there are manifest errors in this, to-wit:

I.

That the Court erred in overruling the motion of plaintiff for a judgment upon the testimony.

II.

That the Finding of Fact as to the first cause of action is not sustained by the evidence adduced at the trial of the above entitled cause and the Court erred in making the said finding.

III.

That the Finding of Fact as to the second cause of action is not sustained by the evidence adduced at the trial of the above entitled cause and the Court erred in making the said finding.

## IV.

That the Finding of Fact as to the third cause of action is not sustained by the evidence adduced at the trial of the above entitled cause and the Court erred in making the said finding.

## V.

That the Finding of Fact as to the Fourth cause of action is not sustained by the evidence adduced at the trial of the above entitled cause and the Court erred in making the said finding.

## VI.

That the Finding of Fact as to the fifth cause of action is not sustained by the evidence adduced at the trial of the above entitled cause and the Court erred in making the said finding.

## VII.

That the Finding of Fact as to the first cause of action is not sustained by law and the Court erred in making the said finding.

## VIII.

That the Finding of Fact as to the second cause of action is not sustained by law and the Court erred in making the said finding.

## IX.

That the Finding of Fact as to the Third cause of action is not sustained by law and the Court erred in making said finding.

## X.

That the Finding of Fact as to the fourth cause of action is not sustained by law and the Court erred in making said finding.

## XI.

That the Finding of Fact as to the fifth cause of action is not sustained by law and the Court erred in making said finding.

## XII.

That the Court erred in declining to make the first Finding of Fact as requested by plaintiff.

## XIII.

That the Court erred in declining to make the second Finding of Fact as requested by plaintiff.

## XIV.

That the Court erred in declining to make the third Finding of Fact as requested by plaintiff.

## XV.

That the Court erred in declining to make the

fourth Finding of Fact as requested by plaintiff.

XVI.

That the Court erred in declining to make the fifth Finding of Fact as requested by plaintiff.

XVII.

That the Court erred in declining to make the sixth Finding of Fact as requested by plaintiff.

XVIII.

That the Court erred in declining to make the seventh Finding of Fact as requested by plaintiff.

XIX.

That the Court erred in declining to make the eighth Finding of Fact as requested by plaintiff.

XX.

That the Court erred in declining to make the ninth Finding of Fact as requested by plaintiff.

XXI.

That the Court erred in declining to make the tenth Finding of Fact as requested by plaintiff.

XXII.

That the Court erred in declining to make the eleventh Finding of Fact as requested by plaintiff.

## XXIII.

That the Court erred in declining to make the twelfth Finding of Fact as requested by plaintiff.

## XXIV.

That the Court erred in declining to make the thirteenth Finding of Fact as requested by plaintiff.

## XXV.

That the Court erred in declining to make the fourteenth Finding of Fact as requested by plaintiff.

Wherefore, on account of the errors above assigned, the plaintiff prays that the judgment of said Court be reversed and that this cause be remanded to the said District Court and that such directions be given that the above errors may be corrected and law and justice be done in the matter.

Dated at Portland, Oregon, this 14th day of February, 1921.

THOS. H. MAGUIRE,

Assistant United States Attorney  
for the District of Oregon, Attor-  
ney for Plaintiff.

STATE OF OREGON, )  
                                  ) ss.  
County of Multnomah, )

Due, legal and timely service of the foregoing As-



signment of Errors is hereby acknowledged by receipt of a copy thereof at Portland, Oregon, this 15th day of February, 1921.

WILBUR, BECKETT & HOWELL,

Attorneys for defendant.

AND AFTERWARDS, to-wit, on Tuesday, the 15th day of February, 1921, the same being the 90th judicial day of the regular November term of said Court; present the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to wit:

**(ORDER ALLOWING WRIT OF ERROR)**

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF OREGON

THE UNITED STATES OF  
AMERICA,

Plaintiff,

vs.

COLUMBIA & NEHALEM RIVER  
RAILROAD COMPANY,

Defendant.

Order  
Allowing  
Writ of  
Error.

NOW AT THIS TIME comes the plaintiff in the above entitled cause, by Thos. H. Maguire, Assistant United States Attorney, and presents to the Court its petition praying for the allowance of a Writ of Error

to be issued out of the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment of this Court entered in said cause and moves the Court for an order allowing the said petition.

On consideration whereof IT IS ORDERED that the Writ of Error issue as prayed for in said petition,

IT IS FURTHER ORDERED that all proceedings in the above entitled District Court be stayed, superseded and suspended until the final disposition of the Writ of Error in the aforesaid United States Circuit Court of Appeals for the Ninth Circuit.

Dated at Portland, Oregon, this 15th day of February, 1921.

R. S. BEAN,  
Judge.

STATE OF OREGON, )  
County of Multnomah, ) ss.

Due, legal and timely service of the foregoing Order allowing Writ of Error is hereby acknowledged by receipt of a copy thereof at Portland, Oregon, this 15th day of February, 1921.

WILBUR, BECKETT & HOWELL,  
Attorneys for Defendant.

AND AFTERWARDS, to wit, on the 15th day of February, 1921, there was issued out of said Court a Citation on Writ of Error in words and figures, as follows, to wit:

**(CITATION ON WRIT OF ERROR)**

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF OREGON.

UNITED STATES OF  
AMERICA,

Plaintiff,

vs.

COLUMBIA & NEHALEM RIVER  
RAILROAD COMPANY,  
Defendant.

UNITED STATES OF AMERICA, )  
District of Oregon, ) ss.

To COLUMBIA & NEHALEM RIVER RAIL-  
ROAD COMPANY, Defendant above named  
and Defendant in Error, and WILBUR, BECK-  
ETT & HOWELL, its attorneys, GREET-  
INGS:

YOU ARE HEREBY CITED and ADMON-  
ISHED to be and appear before the United States



Writ of Error in words and figures, as follows, to-wit:

(WRIT OF ERROR)

IN THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE NINTH DISTRICT.

THE UNITED STATES OF		} Writ of Error.
AMERICA,	Plaintiff,	
vs.		
COLUMBIA & NEHALEM RIVER		
RAILROAD COMPANY,	Defendant.	

THE UNITED STATES OF AMERICA.—ss.  
THE PRESIDENT OF THE UNITED  
STATES OF AMERICA.

To the Judge of the District Court of the United  
States for the District of Oregon:

GREETING:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the District Court before the Honorable Robert S. Bean one of you, between United States of America Plaintiff and Plaintiff in Error, and Columbia & Nehalem River Railroad Company, Defendant and Defendant in Error, a manifest error hath happened to

the great damage of said Plaintiff in Error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

WITNESS the HONORABLE EDWARD  
DOUGLAS WHITE,  
Chief Justice of the Supreme Court of the United  
States, this 15th day of February, 1921.

(Seal)

G. H. MARSH,  
Clerk of the District Court of the United  
States for the District of Oregon.

AND AFTERWARDS, to wit, on the 5th day of March, 1921, there was duly filed in said Court, a Bill of Exceptions in words and figures as follows, to wit:

**(BILL OF EXCEPTIONS)**

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF OREGON.

THE UNITED STATES OF AMERICA,	Plaintiff,	} Bill of Exceptions.
vs.		
COLUMBIA & NEHALEM RIVER RAILROAD COMPANY,	Defendant.	

BE IT REMEMBERED that on the 15th day of July, 1920, a day of the regular July term of the above entitled Court beginning and held at Portland, Oregon, the Honorable Robert S. Bean, District Judge, presiding, the above entitled cause came on to be heard before said Court, the parties thereto, by their written waiver and stipulation on file herein, having waived a jury trial, the plaintiff appearing by Chas. W. Reames, Assistant United States Attorney, and Roscoe B. Walters, attorney for the Interstate Commerce Commission, and the defendant appearing by Veazie & Veazie, its attorneys,

## EXCEPTION NO. I.

Whereupon the following proceedings were had:  
CASSIUS CLAY COCHRAN being called as a witness for the plaintiff and, being first duly sworn, testified as follows:

That he is and has been since prior to September 1, 1919, auditor of the Columbia & Nehalem River Railroad Company, defendant herein and, as auditor, has access to the records of the said defendant, and is familiar with the methods of business and operation of said Railroad. That a certain shipping order, dated September 1, 1919, covering a car designated as N. W. 21543, loaded with shingles, consigned to M. J. Campbell Lumber & Shingle Company, per M. J. Campbell, at Elwood Siding, Oregon, to M. J. Campbell Lumber & Shingle Company, at Kerry, Oregon, which was offered in evidence and marked "Complainant's Exhibit 1," and a certain shipping order, dated September 9, 1919, covering a car designated as P. R. R. 287591, loaded with railroad ties consigned by Fred Beer Lumber Company, per Sam Beer, to Penn Line West, at Chicago, from Birkenfeld, Oregon, which was offered in evidence and marked "Complainant's Exhibit 2," and a shipping order, dated September 6, 1919, covering a car designated as C. & N. W. 76885, loaded



with lumber consigned by Gustina Bros., per G. Gustina, at Birkenfeld, Oregon, to St. Louis & San Francisco Railroad, at Springfield, Missouri, which was offered in evidence and marked "Complainant's Exhibit 3," and shipping order dated November 1, 1919, covering a car designated as N. W. 20098, loaded with lumber, consigned by Fred Beer Lumber Company, per Sam Beer, at Birkenfeld, Oregon, to C. B. & Q. R. R., at Sheridan, Wyoming, which was offered in evidence and marked "Complainant's Exhibit 5," and shipping order, dated November 8, 1919, covering a car designated as C. & E. I. 2242, loaded with shingles, consigned by M. J. Campbell Lumber & Shingle Company, per David Scott, at Campbell Mills, known to defendant corporation as Elwood Siding, to the same consignor at Kerry, Oregon, which was offered in evidence and marked "Complainant's Exhibit 6," and shipping order, dated November 14, 1919, covering a car designated as L. V. 72682, loaded with shingles, consigned by W. F. Turner, at Nehalem Camp, Oregon, to Coast Fir & Lumber Company, at Cheyenne, Wyoming, which was offered in evidence and marked "Complainant's Exhibit 4," were duplicate bills of lading from the files of the defendant corporation.

That in the ordinary course of business, the ship-

per, when the loaded car was sent to the assembling point, sent with it, in case the shipment was destined for some point beyond the lines of defendant, one bill of lading for the defendant, covering carriage from the point of origin to Kerry, the terminus of defendant's line, and a separate bill of lading covering the carriage of shipment from Kerry to destination over the Spokane, Portland & Seattle Railroad lines, the only railroad connecting with defendant's line, and other roads. Both bills would always be made out by the shipper and were brought by the train crew to defendant's offices, at Kerry, where the agent of defendant would file the Columbia & Nehalem bill, note the final destination of shipment as shown by the accompanying S. P. & S. bill, and deposit the S. P. & S. bill in a small box, provided for that purpose, near the S. P. & S. station. The car containing the shipment would then be left on a spur of the S. P. & S., at Kerry. The conductor of the next east bound freight train of the S. P. & S. would stop and get the S. P. & S. billing from the box, pick up the corresponding car from the spur, and take the bill and car to Clatskanie, the next station east of Kerry on the S. P. & S., where the S. P. & S. agent would prepare waybills from Kerry to destination. No agent was maintained by the S.

P. & S. at Kerry. No agreement existed between defendant and the S. P. & S. governing general routing, general rates, or division of rates, or any other joint arrangement. Cars coming in on the line of defendant, loaded with freight from the S. P. & S., were handled the same as in the case of an ordinary shipper. A demurrage rate was charged defendant by the S. P. & S. No per diem arrangement existed. Several times, however, through the inadvertence of defendant's employees and of shippers, the shipping order for defendant corporation showed the final destination to be beyond the lines of the defendant, instead of showing it as Kerry, Oregon. Train crews and agents had been instructed not to accept bills of this kind, but when they had been accepted in that form, a notation was always made upon the arrival of the billing at Kerry, giving the point of origin on defendant's line and showing Kerry as the final destination. The reason that the defendant demanded separate bills of lading is that the defendant cannot properly receipt on bills of lading and return them to shipper if the carriage described in bill of lading does not terminate at Kerry. The defendant receives shipments originating on its lines, regardless of whether final destina-

tion is in the State of Oregon. The shipper deals directly with the S. P. & S. concerning transportation of shipments from Kerry to final destination. Logs constitute 95 per cent of the freight taken over the defendant's lines. Practically, all of the freight delivered to the defendant by the S. P. & S., at Kerry, for shipment over defendant's lines, originates at points within the State of Oregon. That he estimates that between 40 and 50 per cent of carload shipments other than logs, originating at points on defendant's lines, are destined for points outside the State of Oregon. That he estimates that the amount of business that the S. P. & S. receives at Kerry for transportation outside the State of Oregon would not exceed 1 per cent of the total business of the defendant. Movements of general freight ordinarily take place two or three times a week so as not to interfere with the logging traffic.

That during September and November, 1919, the defendant carried United States mail, free of charge, and no record was kept of it. All mail destined for points on defendant's lines was addressed to Kerry, Oregon, and separated by the Postmaster there, placed in sacks, addressed to different camps along the defendant's line, and turned over to defendant for delivery.

That the defendant carried express to and from points along the line. Upon express packages arriving at Kerry addressed to consignee, located on defendant's line, a separate express bill would be made out and separate payment would be made to the defendant for carriage from Kerry to destination. The method of handling and accounting for express was similar to that of handling and accounting for freight. No shipments were made either to or from points on defendant's line on through express bills. All express arriving from outside points were addressed to the consignee, at Kerry, and then were rebilled over the lines of defendant. That he believes that Sears, Roebuck & Co., and Montgomery Ward & Co. have sent express packages to consignees on defendant's line. That defendant possesses no other freight cars except three flat cars and one stock car. That all of the shipments shown on Complainant's Exhibits, One to Six, inclusive, were loaded on foreign cars.

Whereupon DON J. TERPENING was called as a witness for plaintiff, and, being first duly sworn, testified as follows:

That he is, and has been since June 15, 1920, station agent of the S. P. & S. Railway, at Clatskanie, Oregon, and by virtue of such employment has ac-

cess to the records of the said railway kept at Clatskanie. That shipping order, dated August 31, 1919, covering a car designated as N. W. 21543, loaded with shingles, consigned by M. J. Campbell Lumber & Shingle Company, per M. J. Campbell, from Kerry, Oregon, to Coast Fir & Lumber Company, at Detroit, Michigan, which was offered in evidence and marked "Complainant's Exhibit 7," and a shipping order, dated September 9, 1919, covering a car designated as P. R. R. 287591, loaded with railroad ties, consigned by Fred Beer Lumber Company per Samuel Beer, from Birkenfeld, Oregon, to Penn Line West, Care of C. W. Cushing, C. E. M., at Chicago, Illinois, offered in evidence and marked "Complainant's Exhibit 8" and a shipping order, dated September 9, 1919, covering a car designated as C. & N. W., 76885, loaded with lumber, consigned by Gustina Bros., per G. Gustina, no originating point being designated, to St. Louis & San Francisco Railroad, Care of E. Price, at Springfield, Missouri, which was offered in evidence and marked "Complainant's Exhibit 9," and shipping order, dated November 1, 1919, covering a car designated as N. W. 20098, loaded with lumber consigned by Fred Beer Lumber Company, per Samuel Beer, at Birkenfeld, Oregon, to C. B. & Q. R. R.,



care of Storekeeper, at Sheridan, Wyoming, which was offered in evidence and marked "Complainant's Exhibit 10," and shipping order, dated November 8, 1919, covering a car designated as C. & E. I. 2242, loaded with shingles, and consigned by M. J. Campbell Lumber & Shingle Co., per David Scott, at Kerry, Oregon, to Hooper & Smith, at Ventura, California, which was offered in evidence and marked "Complainant's Exhibit 11," and a shipping order, dated November 14, 1919, covering a car designated as L. V. 72682, loaded with shingles, consigned by W. F. Turner, at Nehalem Camp, Oregon, to Coast Fir Lumber Company, at Cheyenne, Wyoming, which was offered in evidence and marked "Complainant's Exhibit 12," were all records of the S. P. & S., kept at Clatskanie, Oregon. That in the ordinary course of business, the cars mentioned therein were received and carriage was made by the S. P. & S. from Kerry, Oregon, on or about the dates set forth therein. That all points of origin, other than Kerry, Oregon, set forth in the said Exhibits are located upon the line of the defendant. That those bills or shipping orders showing any other originating point than Kerry were incorrectly made out, as the only point of receipt of freight from any points on defendant's lines was at Kerry. That

Exhibits 7 and 12, inclusive, and all cars and shipments referred to therein, were, in the ordinary course of business, picked up by an S. P. & S. freight conductor, at Kerry, and brought to Clatskanie, where the agent receipted the bill of lading, prepared waybills, and sent the freight on its way.

Whereupon J. GRANT NASH was called as a witness for the plaintiff, and being first duly sworn, testified as follows:

That he is, and has been for the past 15 months, employed by defendant corporation as train dispatcher at Kerry, Oregon. His duties were those usually assigned to a train dispatcher. That he has access to the train sheets and records of trains' movements of defendant corporation kept at Kerry, Oregon. That the defendant operates a single track line. That in 1919, there were two passing tracks. That the system followed by the defendant was to assemble all trains at Thompson Siding, by means of switch engines that ran to all the logging camps, and collected cars at the assembling point. That when a full train was assembled, the train movement would be started. That passenger cars consisting of automobiles adapted to railroad track use, are numbered on all train sheets in the order of their arrival, odd num-



bers showing North bound, and even numbers showing South bound trains. Logging trains are designated by the engine numbers. That passenger trains only were governed by schedules, no regular schedules of logging or freight trains being maintained. That Complainant's Exhibit 13 is a train sheet showing movements of trains over defendant's lines on September 1, 1919, between Kerry and Sunnyside. That Exhibit does not show the first order given that date, as it is a standing order for No. 1 to leave Sunnyside at 5:45 A. M. and proceed to Nehalem Junction, where witness usually picks them up between 6:30 A. M. and 6:45 A. M. On September 1, 1919, No. 1 left Sunnyside at 6 A. M., which information was obtained, and noted on train sheet later that day. That he was on duty, dispatching trains, on September 1, 1919, from between 6 and 6:30 A. M. to 10:35 P. M. That he made a check mark opposite the time of the last order given, which order was given to No. 117, which cleared from Kerry for Thompson Siding at 10:35 P. M., arriving there at 11:50 P. M. After No. 117 had cleared Kerry, no further orders were needed, so witness retired. On September 1, 1919, a car designated as N. W. 21543, containing shingles consigned to Detroit, Michigan, was handled

over defendant's line, on train No. 118, arriving at Kerry at 7:50 P. M. That on that date ten trains ran each way on the main line, and two trains on branch service between Thompson Siding and Nehalem Camp, for the purpose of picking up logs, making a total of 22 trains. That Complainant's Exhibit 14 is a train sheet, showing movements on defendant's line on September 9, 1919, between Kerry and Sunnyside. That Exhibit shows that No. 1 left Sunnyside at 5:55 A. M., but that witness was not on duty until 6:30 A. M. That he stayed on duty until 9:45 P. M., as shown by check mark opposite the time of the last order. On that date there were 22 main line movements, and two branch line movements. On that date a car designated at P. R. R. 287591, containing ties consigned to Chicago by Fred Beer Company, and car designated as C. & N. W. 76885, containing lumber consigned to Springfield, Missouri, by Gustina Bros., were handled over defendant's line, car 287591 arriving on No. 117 at Kerry at 4:45 P. M., and car 76885 arriving at Kerry on train No. 117 at 9:40 A. M. That Complainant's Exhibit 15 is a train sheet showing movements of trains on defendant's line on November 2, 1919. That he went on duty at usual hour of about 6:30 A. M., and went off duty at

12:10 A. M. the following morning. That 26 trains were moved on that date. That car designated as N. W. 20098 containing lumber consigned to Sheridan, Wyoming, by the Beers Company was handled by defendant on that date, arriving at Kerry on train 117, at 10:20 P. M. That Complainant's Exhibit 16 is a train sheet showing movements on defendant's lines on November 5, 1919. That on that date he went on duty about 6:30 A. M., and went off duty at 12:15 A. M. the following morning. That on that date a car designated as C. & E. I. 2242 went out on the defendant's line for loading. That a car designated as B. & O. 92002, containing shingles consigned to California, and a car designated as Penn. 925234, containing lumber consigned to Illinois, by Gustina Bros. were handled on that date, car 92002 arriving at Kerry on train 117 at 4:45 P. M., and car 925234 arriving at Kerry on train 117 at 11:30 A. M. That Complainant's Exhibit 17 is a train sheet showing movements on defendant's line on November 15, 1919. That he was on duty on that date from about 6:30 A. M. to 9:20 P. M. On that date a car designated as L. V. 72682 containing shingles consigned to Cheyenne, Wyoming, was handled over defendant's line, arriving at Kerry on train No. 119 at 9:30 A. M. That on all of

the dates mentioned in the foregoing Exhibits, he was awakened by an alarm clock at 6 A. M., and arrived at the office for duty within a half hour. That each night as soon as he was certain that a train had a clear track and had cleared all points from which a report was necessary, he retired. There were a superintendent and trainmaster at Thompson Siding, where they had the same telephone connection as the witness, and it was usually possible for them to keep track of and handle trains after 6 P. M., but it was not customary and witness preferred to keep all dispatching under his own control. That he had no contract or understanding as to hours of work. That when he left Kerry, ordinarily the superintendent or the auditor, did the dispatching. That during the fall of 1919 it was impossible, as a rule, to close the office before 9 or 10 P. M., at the earliest, as there were generally trains at Kerry at that hour that were unloading that could not be reached by telephone at the place of unloading, so it was necessary for them to come to the office for orders. That there is practically no town at Kerry. There is a scow boat there that takes in roomers at night and at which the employees of the railroad get some of their meals but other than that there is simply a small combination store and post office. That he

slept in the same building where his office is, his sleeping room being upstairs over the dispatcher's office and the only place in the building where there is a stove is in the dispatcher's office and he uses the office as a sort of a living room and generally sits in the office and reads the paper and smokes after supper as there are no amusements of any kind at Kerry. That he generally spent his evenings in the office whether there were any trains on the line or not and would shave and make his toilet in the office rather than in his bedroom upstairs. That the jitney which carried passengers would leave Sunnyside at 5:45 on an understood or standing order and that logging trains which were the first trains that started in the morning that would require orders would not get started until 7:00 o'clock or after. That he got the information which he noted on the train sheets as to the final destination of cars from the S. P. & S. bill of lading. That owing to the character of the business which the defendant was engaged in, there was no regular schedule or running time for any of the logging trains. That he has taken a pride in keeping the dispatching of these trains under his own control and through a sense of responsibility or pride has kept a pretty tight rein on the dispatching and rather re-

sented the idea of any one assisting him in dispatching. That an examination of the train sheets will show that four out of five are orders which he gave trains going south and not trains out on the line, these orders being given principally to trains that came into Kerry to unload their logs and were going back to Thompson Siding. That after the logging trains would come into Kerry, it would take them about two hours to unload. That although there were no other trains on the line, he would not give the train crew orders to proceed back to Thompson Siding when they arrived at Kerry for unloading but would wait until the train crew had finished unloading and would then give them running orders. That even though he knew there were no other trains on the line he thought it would be taking a chance to give the crew an order to proceed back to Thompson Siding to tie up for the night several hours before they were to start and that he considered that he was on duty during this time.

That during the rainy season in the fall of 1919 defendant's track was not in very good condition due to lack of ballast and it was on this account that trains were frequently late and that when things are running smoothly and the track in good condition in the ordi-



nary operations of the road, the logging trains would be tied up by 8:00 in the evening, the ordinary movement of trains thus taking place from 7:00 in the morning until 8:00 at night. That when commercial cars were brought into Kerry from shippers along the defendant's line, they were ordinarily simply hitched onto one of the logging trains.

Whereupon, the plaintiff rested, and defendant, by its attorney, moved for a non-suit upon the grounds that the plaintiff had not shown that the defendant was engaged in interstate commerce, and that it had not been shown by the plaintiff that the Railroad was being operated continuously day and night within the meaning of the statute and the allegations of the complaint, upon which motion the court reserved its ruling.

Whereupon, defendant offered in evidence copies of defendant's Articles of Incorporation, marked "Defendant's Exhibit A" and Supplementary Articles of Incorporation marked "Defendant's Exhibit B," both duly authenticated and certified by the County Clerk of Multnomah County, Oregon.

Whereupon, A .S. KERRY was called as a witness on behalf of the defendant, and, being first duly sworn, testified as follows:

That he is President and General Manager of the Columbia & Nehalem River Railroad Company. That the defendant's line starts in the State of Oregon, in Columbia County, about one mile from the Clatsop County line, on a slough that runs into the Columbia River. That it taps the Nehalem Valley Timber Belt. That the original intention of the incorporators of the road, which was started about six years ago, was to haul their own timber, but they found they could not get in without hauling timber for others, so incorporated as a common carrier. That the defendant Railroad is primarily a logging railroad, the curvature and grade being heavy, but the construction not as expensive as that of an ordinary railroad. That during the past year and a half, the road has been running over capacity, because the law compels it to accept all traffic, so that now it carries 60 per cent of the commercial logs used on the Columbia River.

That all of the logging trucks belong to loggers along the line. The defendant's own equipment consists of eight locomotives, three flat cars, one locomotive crane, one steam shovel, and two dump cars.

That defendant was not originally incorporated, or intended as a passenger carrier. That it carried



passengers during the first year free of charge, but later put on automobiles converted to railroad use as passenger cars, and made a charge for hauling.

That defendant has no physical contract with any other road, save the S. P. & S. at Kerry, the northern terminus of defendant's line. That no arrangement existed with the S. P. & S. for interchange of cars. That defendant was treated the same as a shipper, that is, was allowed 48 hours to unload and clear a car, after which time demurrage was charged. The S. P. & S. had no per diem agreement as to use of cars; no arrangement for routing of inbound traffic from the S. P. & S. to points on defendant's line, nor for routing outgoing freight over the S. P. & S., or other lines beyond Kerry; no arrangements for joint rates on freight or any traffic, nor for division of rates. Employees of defendant were instructed to confine the billing and handling of freight strictly to defendant's line. When separate bills of lading for S. P. & S. shipments were brought to Kerry, the defendant and its agents acted simply as a messenger for the consignor.

Besides the dispatcher, Mr. Nash, defendant employed a Superintendent and a trainmaster, who could have taken care of dispatching. They were stationed at Thompson Siding. They had been instructed that

if a telephone call for the dispatcher should be repeated without the dispatcher answering, either one of them should answer the phone and dispatch train. It was not difficult for anyone to keep track of trains, as there were only two passing tracks, one at the south end of a tunnel ten miles from Kerry, and one five miles from Kerry. There is a telephone at both passing tracks, and at the tunnel. Trains were usually made up at Thompson Siding, and a double train started towards Kerry. Train No. 118 would lay over at Kerry and run single, ordinarily meeting double train at the passing tracks. The passenger car ordinarily leaves Sunnyside at 6 A. M. When Nash was first employed in the Spring of 1919, the passenger conductor would report at Nehalem Junction, but now reports at Thompson Siding at 7 A. M., passes ahead of the logging traffic and meets No. 118 at the tunnel or further passing track. That the conductor needed no orders or clearance from Nash to pass Thompson Siding. Standing orders existed to precede all logging traffic; therefore, specific orders were not necessary until the tunnel was reached. Train No. 118 never leaves the tunnel until the double train passes. That there is a written rule to be invoked if the telephone wires are down, providing that he must wait

there for that meeting. After the meet, No. 118 goes to Thompson Siding and the double train to Kerry. That the passenger car made two round trips daily; that the schedule brought him to Kerry at 4:30 P. M. and back to Sunnyside at 7 P. M. However, this schedule was sometimes delayed, according to conditions, as late as 9:30 P. M. That the ordinary daily operations of a logging train extended from 7 A. M. to 6 P. M. In 1919 conditions were bad, and the service variable, owing to the volume of business and inadequacy of equipment. Trains would be delayed from 15 to 20 per cent of the time. If no wrecks or mishaps occurred, trains were generally tied up around 7 P. M., except twice a week, when way freight was hauled. That on those occasions a switch engine would arrive at Kerry after the logging movements had ceased, to pick the freight up and deliver it along the line. That no dispatching was necessary for such movements, as the track was clear. On occasions when Train No. 118 was late at Kerry, holding up 117 and 119, which could not leave until its arrival, the dispatcher could have earlier in the evening given 117 and 119 orders to move upon the arrival of 118, instead of waiting for the actual arrival. However, the passenger car

scheduled to leave Kerry at 4:30 P. M. was often held up by incoming trains until as late as 9 P. M. The conductor of that train got his information as to the conditions of the line and his orders to move from Nash. That he does not believe that Nash performed any duty for the defendant after 8 P. M. at any time. That Nash stayed in the office evenings, but did no necessary work. In the evenings if train crews would call Nash to notify him that they were tied up for the night or that they had passed certain points, Nash would answer the phone and receive the report; but witness does not think it was necessary for them to call, and does not think as a matter of fact they did call him. That Nash frequently stayed up until all train reports were in. That witness did not wish Nash to remain in the office as much as he did, and had once proposed hiring another man to assist him, but Nash objected so that the man was not hired. That Nash's services were satisfactory. That a certain time table dated March 1, 1920, offered in evidence and marked "Defendant's Exhibit C" is the same as was in effect during the year 1919, except that in 1919 the first train left Sunnyside at 6 A. M., and one passenger car made two round trips. That the predecessor of Nash always closed the office at

G P. M. That no other logging railroad along the Columbia River employs a dispatcher. That the traffic on the line is very sporadic and it is impossible to maintain any regular train schedules other than for the passenger cars. That the only station on the defendant's line where an agent is maintained is at Kerry. That 95 per cent of the total amount of traffic on the road constitutes shipments of logs and all of the logs are dumped into the Columbia River at Kerry. That it is the duty of the train master and the superintendent to make up the trains at Thompson Siding and to lend any assistance in getting the trains over the road that is necessary and the superintendent is on the same line of telephone that Mr. Nash is on and when Mr. Nash is called, the telephone also rings in the superintendent's office and in case Mr. Nash does not answer the telephone or is away, the train master or the superintendent answers it and dispatch the trains and the superintendent and train master keep track of most of the trains' moves so that they are in position to dispatch trains whenever necessary. That he believes that the train sheets are absolutely wrong as to the time Mr. Nash worked. That Nash uses the office as a sitting and living room and is in the office there all the time ex-

cept when he goes upstairs to sleep, whether he is on duty or not.

That on occasions when wrecks take place and he, or others in the employ of the company, is out on the line late at night clearing them up, there is absolutely no necessity of any dispatching service on the part of Mr. Nash and he thinks this time that Mr. Nash stated that he went off duty at 12:15 that he was out on the line himself cleaning up a wreck in which they had lost five lots of logs and he came into the office at 12:15 and Mr. Nash was sitting in the office; that he asked Mr. Nash what he was doing and he said he was waiting for the trains; that trains Nos. 117 and 119 were waiting at Kerry for the train that was wrecked, that is 118, to come in, and there was no necessity of Mr. Nash staying up and he could have gone to bed at six o'clock and simply instructed 117 and 119 to clear for Thompson Siding whenever 118 arrived at Kerry. That during this evening there was no possible chance of any trains meeting on the line. That he did not want the defendant to do anything that would make it an interstate carrier and he had instructed all employes not to receive payment for any shipments on the road beyond Kerry; that the defendant moves traffic only

on bill of lading reading to Kerry. That the first intimation that he ever had that any of the employes of the defendant ever paid any attention to the final destination of a car was during the trial when he saw the destination marked on the train sheets. That he examined the train sheets daily when in his office to see how many logs were coming in and he never noticed before that the final destination of any cars was marked on any of the train sheets and he was surprised to find them marked on the sheets. That the superintendent keeps a working time card of each train and Mr. Nash gets this report and many of the late entries on the train sheets Mr. Nash would write up from the report of the superintendent the next morning. That the passenger train was scheduled to leave Kerry southbound at 4:30 P. M., but it was frequently delayed and sometimes would not get out until as late as 9:00 at night. That the passenger train could not leave Kerry until the logging trains that were out on the line arrived at Kerry and there was no necessity for Mr. Nash remaining up or on duty until the passenger train left as he could just as well have told the passenger train crew to leave Kerry when the other trains had come in as the track would be clear at that time.



Whereupon C. C. Cochran was called as a witness on behalf of the defendant, and, being first duly sworn, testified as follows:

That his office adjoins that of Mr. Nash. That he generally arrives at the office at 7 A. M., when, as a rule, Nash is in the office making his toilet. That Nash usually reads in the office every evening. That during 1919, the trains could be tied up by the dispatcher on an average of not later than 8 or 8:30 P. M., except in case of emergency, which abnormal conditions existed about twenty per cent of the time.

Whereupon defendant rested, and J. G. Nash was recalled as a witness by the plaintiff in rebuttal, and testified as follows :

That on September 1, 1919, he was on duty until 10:35 P. M. That train No. 118 arrived at Kerry at 10:25 P. M., ten minutes before No. 117 left. That it was necessary to see 118 in before 117 could be ordered out. That No. 4 and 118 met at the south end of the tunnel at 9:10 P. M., and so it was necessary to be on duty at 9:10 P. M., to take care of that meeting. That on September 9, 1919, he was on duty until 9:45 P. M., at which hour two trains, 119 and 4, received final orders. That on November 2,



1919, he was on duty until 12:10 A. M. the following morning. That the last train left Kerry at 11:30, arriving at the south end of the tunnel at 12:10 A. M., where they received final clearance. That No. 4 left Kerry at 10:55 P. M., and he sold tickets for that trip. That on November 5 he was on duty until 12:15 A. M. the following morning. That train 117, arriving at Kerry at 11 P. M., unloaded and received his orders at 12:15 A. M. That on November 15, 1919, he was on duty until 9:20 P. M., at which hour he received the report of arrival of 120 at Thompson Siding. That he kept records of all foreign cars on the train sheets, listing them there on the date of handling by the defendant and under the train in which they were hauled. That when the destination of the consignment beyond Kerry was set forth on defendant's bill of lading, he usually changed it to Kerry as final destination. That he would determine the final destination of a foreign car for notation on the train sheets by reference to the S. P. & S. bill of lading. That he had never received instructions not to do so. That the reason for making the said notations was for convenience as train sheets for the three preceding months were always kept on his desk. That he considered that he should not

retire until it was no longer necessary to issue further orders to insure the arrival of trains at destination. That he made notations or check marks signifying that his duty was complete at the time he went off duty. That entries made on train sheets showing arrival of trains after the hour checked were made from the estimated arrival of the train. That he would not consider that the office was closed or that he was off duty until he locked the office and went upstairs to bed. That on the train sheets there are several entries shown after the time when he marked himself off duty and these entries would be simply his estimate as to the running time of the train or else he would make the entry the next morning showing the final arrival of the train at destination.

The foregoing is all of the testimony introduced or offered in the case, and at the conclusion thereof, both parties announced that they had no further or other testimony to offer,

WHEREUPON, plaintiff by its attorney, orally moved the court for a judgment upon the testimony upon the ground that the uncontradicted testimony supported the allegations set forth in plaintiff's complaint, which motion the court over-

ruled.

That thereafter, on the 16th day of August, 1920, the Court made general findings in favor of the defendant and entered judgment in favor of the defendant and against this plaintiff.

That thereafter on the 13th day of December, 1920, plaintiff, by its attorney, presented to the Court a request for Finding of Fact, as follows, to-wit:

“As to whether the movement of C. & N. W. car No. 21543, loaded with shingles and consigned from Elwood Siding, Oregon, to Detroit, Michigan, over the lines of the Columbia & Nehalem River Railroad and other railroads, on September 1, 1919, handled by J. G. Nash, train dispatcher of the Columbia and Nehalem River Railroad at Kerry, Oregon, constituted a movement of trains or the consignment of goods in interstate commerce,”

which request the Court declined to grant, to which action of the Court plaintiff duly requested and was allowed an exception.

### EXCEPTION NO. II.

That on the said 13th day of December, 1920, plaintiff, by its attorney, presented to the Court a re-

quest for Finding of Fact, as follows, to-wit:

“As to whether J. G. Nash, train dispatcher for the Columbia & Nehalem River Railroad at Kerry, Oregon, was permitted to remain on duty for a longer period than nine hours on September 1, 1919, in the 24 hour period, to-wit: from the hour of six o'clock A. M., on said date to the hour of 11:50 P. M., on said date, and whether he was employed during that time directing the movement of trains, or a train, engaged in interstate commerce, and whether or not the remaining upon duty of said train dispatcher on September 1, 1919, as stated, was a violation of the Hours of Service Act,”

which request the Court declined to grant, to which action of the Court plaintiff duly requested and was allowed an exception.

### EXCEPTION NO. III.

That on the said 13th day of December, 1920, plaintiff, by its attorney, presented to the Court a request for Finding of Fact, as follows, to-wit:

“As to whether the shipment over the line of the Columbia & Nehalem River Railroad and other lines of Car No. 287591, initialed P. R. R.,

containing ties from Birkenfeld, Oregon, to Chicago, Illinois, handled by J. G. Nash, train dispatcher of the Columbia & Nehalem River Railroad, on September 9, 1919, constituted a movement of trains, or a train, engaged in interstate commerce, or the shipment of goods in interstate commerce,"

which request the Court declined to grant, to which action of the Court plaintiff duly requested and was allowed an exception.

#### EXCEPTION NO. IV.

That on the said 13th day of December, 1920, plaintiff, by its attorney, presented to the Court a request for Finding of Fact, as follows, to-wit:

"As to whether Car No. 76885, initialed C. & N. W., loaded with lumber shipped from Birkenfeld, Oregon, to Springfield, Illinois, handled by Train Dispatcher J. G. Nash of the Columbia & Nehalem River Railroad at Kerry, Oregon, on September 9, 1919, and shipped over the Columbia & Nehalem River Railroad and other railroads, constituted a movement of a train or trains, or the shipment or consignment of goods in interstate commerce, .

which request the Court declined to grant, to which

action of the Court plaintiff duly requested and was allowed an exception.

### EXCEPTION NO. V.

That on the said 13th day of December, 1920, plaintiff, by its attorney, presented to the Court a request for Finding of Fact, as follows, to-wit:

“As to whether J. G. Nash, train dispatcher at Kerry, Oregon, of the Columbia & Nehalem River Railroad, was permitted to work and remain on duty more than nine hours in the twenty-four hour period in which he was then employed, on September 9, 1919, and whether he was engaged in the directing of trains and dispatching of trains engaged in interstate commerce, or carrying articles which were shipped in interstate commerce,”

which request the Court declined to grant, to which action of the Court plaintiff duly requested and was allowed an exception.

### EXCEPTION NO. VI.

That on the said 13th day of December, 1920, plaintiff, by its attorney, presented to the Court a request for Finding of Fact, as follows, to-wit:

“As to whether the movement of Car No.

20098, initialed NW, loaded with lumber consigned from Birkenfeld, Oregon, to Sheridan, Wyoming, over the Columbia & Nehalem River Railroad and other railroads, handled by J. G. Nash at Kerry, Oregon, on November 2, 1919, constituted a movement of a train or trains in interstate commerce, or the shipment or consignment of goods in interstate commerce or forming a part of interstate commerce,"

which request the Court declined to grant, to which action of the Court plaintiff duly requested and was allowed an exception.

#### EXCEPTION NO. VII.

That on the said 13th day of December, 1920, plaintiff, by its attorney, presented to the Court a request for Finding of Fact, as follows, to-wit:

"As to whether J. G. Nash, train dispatcher of the Columbia & Nehalem River Railroad at Kerry, Oregon, was permitted by the Columbia & Nehalem River Railroad to remain upon duty more than nine hours of the twenty-four hour period in which he was employed on November 22, 1919, and whether he was engaged in dispatching trains engaged in interstate com-

merce, or carrying articles forming a part of interstate commerce in violation of the Hours of Service Act,"

which request the Court declined to grant, to which action of the Court plaintiff duly requested and was allowed an exception.

### EXCEPTION NO. VIII.

That on the said 13th day of December, 1920, plaintiff, by its attorney, presented to the Court a request for Finding of Fact, as follows, to-wit:

"As to whether Car No. 2242, initialed C. & E. I., loaded with shingles consigned from M. J. Campbell Lumber Company, Elwood, Oregon, to Ventura, California, on November 5, 1919, handled by J. G. Nash, train dispatcher of the Columbia & Nehalem River Railroad at Kerry, Oregon, constituted a movement of a car or cars engaged in interstate commerce, and whether it constituted a shipment of articles in interstate commerce,"

which request the Court declined to grant, to which action of the Court plaintiff duly requested and was allowed an exception.



**EXCEPTION NO. IX.**

That on the said 13th day of December, 1920, plaintiff, by its attorney, presented to the Court a request for Finding of Fact, as follows, to-wit:

“As to whether J. G. Nash, train dispatcher of the Columbia & Nehalem River Railroad at Kerry, Oregon, was permitted to work more than nine hours in the twenty-four hour period in which he was employed on November 5, 1919, at Kerry, Oregon, and whether he was then engaged in handling cars engaged in interstate commerce or dispatching cars carrying articles forming a part of interstate commerce,”

which request the Court declined to grant, to which action of the Court plaintiff duly requested and was allowed an exception.

**EXCEPTION NO. X.**

That on the said 13th day of December, 1920, plaintiff, by its attorney, presented to the Court a request for Finding of Fact, as follows, to-wit:

“As to whether Car No. 72682, initialed LV, containing shingles consigned from Nehalem Camp, Oregon, to Cheyenne, Wyoming, over the Columbia & Nehalem River Railroad and other

railroads, handled by Train Dispatcher J. G. Nash of the Columbia & Nehalem River Railroad at Kerry, Oregon, on November 15, 1919, constituted a train engaged in interstate commerce, or the shipment or consignment of articles forming a part of interstate commerce," which request the Court declined to grant, to which action of the Court plaintiff duly requested and was allowed an exception.

### EXCEPTION NO. XI.

That on the said 13th day of December, 1920, plaintiff, by its attorney, presented to the Court a request for Finding of Fact, as follows, to-wit:

"As to whether Train Dispatcher J. G. Nash, of the Columbia & Nehalem River Railroad at Kerry, Oregon, was permitted on November 15, 1919, to work more than nine hours in the said twenty-four hour period on the said day on which he was employed and whether he was engaged in dispatching trains engaged in carrying articles forming a part of interstate commerce and whether he was engaged in dispatching trains engaged in interstate commerce and whether the working of J. G. Nash on said November 15, 1919, constituted a violation of the

Hours of Service Act," which request the Court declined to grant, to which action of the Court plaintiff duly requested and was allowed an exception.

### EXCEPTION NO. XII.

That on the said 13th day of December, 1920, plaintiff, by its attorney, presented to the Court a request for Finding of Fact, as follows, to-wit:

"As to whether the shipment and consignment of express packages of the Columbia & Nehalem River Railroad from points along the line of the Columbia & Nehalem River Railroad in the State of Oregon, to points outside of the State of Oregon and over other railroads, constituted the carrying of articles forming a part of interstate commerce,"

which request the Court declined to grant, to which action of the Court plaintiff duly requested and was allowed an exception.

### EXCEPTION NO. XIII.

That on the said 13th day of December, 1920, plaintiff, by its attorney, presented to the Court a request for Finding of Fact, as follows, to-wit:

“As to whether the receipt of articles shipped from points outside of the State of Oregon, over other railroads than the Columbia & Nehalem River Railroad, by the Columbia & Nehalem River Railroad within the State of Oregon, to be delivered and transmitted by said Columbia & Nehalem River Railroad to points along the line of said railroad, constituted the carrying of articles forming a part of interstate commerce,”

which request the Court declined to grant, to which action of the Court plaintiff duly requested and was allowed an exception.

#### EXCEPTION NO. XIV.

That on the said 13th day of December, 1920, plaintiff, by its attorney, presented to the Court a request for Finding of Fact, as follows, to-wit:

“As to whether the receiving of articles which had been shipped in interstate commerce over other railroads than the Columbia & Nehalem River Railroad by the Columbia & Nehalem River Railroad indiscriminately as to whether the articles came from outside the State of Oregon, or within the State of Oregon, but

were actually shipped from points outside the State of Oregon, constituted the carrying of articles forming a part of interstate commerce," which request the Court declined to grant, to which action of the Court plaintiff duly requested and was allowed an exception.

And it is certified that the foregoing and the original exhibits which are annexed hereto and made a part hereof are all of the testimony, evidence, records and exceptions in said cause material to the exceptions herein noted.

And thereafter plaintiff presented this bill of exceptions which is hereby allowed.

R. S. BEAN,  
Judge.

Within Bill of Exceptions lodged with me as Clerk of the within entitled Court, this 12th day of February, 1921.

G. H. MARSH,  
Clerk.

AND AFTERWARDS, to-wit, on 'Thursday, the 10th day of March 1921, the same being the 4th judicial day of the regular March term of said Court; present the Honorable Robert S. Bean, United States

District Judge, presiding, the following proceedings were had in said cause, to-wit:

**(ORDER FORWARDING EXHIBITS)**

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF OREGON

THE UNITED STATES OF AMERICA,	Plaintiff,	} Order.
vs.		
COLUMBIA & NEHALEM RIVER RAILROAD COMPANY,	Defendant.	

Now, at this time, Thos. H. Maguire, Assistant United States Attorney, for the District of Oregon, attorney for the plaintiff herein, appearing before the Court, requesting an Order that the exhibits herein be forwarded with the transcript of Record to the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, at San Francisco, California, for the reason that it is impracticable to copy and incorporate the said exhibits in the transcript of record herein,

It is, therefore, ordered that all of the exhibits in the above entitled case be forwarded with the transcript of record, by the clerk of the above entitled

court, to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California.

R. S. BEAN,

Judge .

Dated at Portland, Oregon, this 10th day of March, 1921.

AND AFTERWARDS, to-wit, on Thursday, the 10th day of March, 1921, the same being the 4th judicial day of the regular March term of said Court; present the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

**(ORDER EXTENDING TIME)**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

THE UNITED STATES OF  
AMERICA,

Plaintiff,

vs.

COLUMBIA & NEHALEM RIVER  
RAILROAD COMPANY,

Defendant.

Order.

Now, at this time, upon motion of Thos. H. Maguire, Assistant United States Attorney, for the Dis-

trict of Oregon, attorney for the plaintiff herein,

It is ordered that the plaintiff be, and it is hereby allowed until the 31st day of March, 1921, in which to file the transcript of record in the above entitled case.

R. S. BEAN,

Judge.

Dated at Portland, Oregon, this 10th day of March, 1921.

AND AFTERWARDS, to-wit, on the 11th day of March, 1921, there was duly filed in said Court, a Stipulation, in words and figures as follows, to-wit:

**(STIPULATION AS TO RECORD)**

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF OREGON

THE UNITED STATES OF  
AMERICA,

Plaintiff,

vs.

COLUMBIA & NEHALEM RIVER  
RAILROAD COMPANY,

Defendant.

} Stipulation.

IT IS HEREBY STIPULATED and AGREED  
by and between the United States of America, plain-  
tiff herein, by Thos. H. Maguire, Assistant United



States Attorney for the District of Oregon, and Columbia & Nehalem River Railroad Company, by Wilbur, Beckett & Howell, its attorneys, that the following documents, papers and records shall be included in the transcript of record in said cause and that the same are all the necessary documents, papers and records to be considered in reviewing said case on Writ of Error, to-wit:

Complaint

Answer

Stipulation waiving jury trial

Opinion of the Court

Findings of Fact and Conclusions of Law

Judgment

Order extending time

Order extending time

Order extending time

Request for Findings of Fact

Order extending time

Order extending time

Petition for Writ of Error

Assignment of Errors

Order allowing Writ of Error

Citation on Writ of Error

Writ of Error

Bill of Exceptions  
 Order forwarding exhibits  
 Order extending time  
 Stipulation as to Record.

IT IS FURTHER STIPULATED by and between the respective parties hereto that the foregoing printed record now tendered to the Clerk of the above entitled Court for his certificate and filed in the above entitled cause, is a true transcript of the record in said cause and that the said Clerk may certify said transcript to the United States Circuit Court of Appeals for the Ninth Circuit without comparing the same with the original record, which is on file herein.

Dated this 11th day of March, 1921.

THOS. H. MAGUIRE,  
 Assistant United States Attorney for the  
 District of Oregon.  
 WILBUR, BECKETT & HOWELL,  
 Attorneys for Defendant.

**(CERTIFICATE OF CLERK)**

IN THE DISTRICT COURT OF THE UNITED  
 STATES FOR THE DISTRICT OF OREGON

THE UNITED STATES OF AMERICA,	} Plaintiff,  } vs.  } COLUMBIA & NEHALEM RIVER RAILROAD COMPANY, Defendant.

UNITED STATES OF AMERICA, )	) ss.
DISTRICT OF OREGON, )	

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing printed Transcript of Record on Writ of Error, in the case of United States of America, Plaintiff in Error, vs. Columbia & Nehalem River Railroad Company, Defendant in Error, is a true transcript of the record in said cause in said Court. This certificate is made without comparing said Transcript of Record with the original record in said cause, pursuant to the stipulation of the parties therein that this record may be certified to by me, to be a true copy, without comparison.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Court, at Portland, in said District, this . . . . day of March, 1921.

Clerk.

